

STATE OF MICHIGAN
COURT OF APPEALS

TACCO FALCON POINT, INC.,

Plaintiff/Counter Defendant-
Appellee,

v

DAVID M. CLAPPER,

Defendant/Counter Plaintiff/Third-
Party Plaintiff-Appellant/Cross
Appellee,

v

ART MIDWEST, INC.,

Intervening Third-Party Defendant-
Appellee/Cross Appellant,

and

AMERICAN REALTY INVESTORS, INC.,

Third-Party Defendant-Appellee,

and

AMERICAN REALTY TRUST, INC.,

Third-Party Defendant-
Appellee/Cross Appellant,

and

ART MIDWEST, L.P.,

Third-Party Defendant.

UNPUBLISHED

February 1, 2007

No. 271525

Oakland Circuit Court

LC No. 2002-042917-CZ

DAVID M. CLAPPER,

Plaintiff-Appellant,

v

TACCO FALCON POINT, INC.,

Defendant-Appellee.

No. 271552

Oakland Circuit Court

LC No. 2005-066850-CZ

Before: Meter, P.J., and O'Connell and Davis, JJ.

O'CONNELL, J. (*dissenting*).

I respectfully dissent. I would vacate the trial court's decision to grant summary disposition and would remand this case for a full evidentiary hearing to determine both whether the original judgment has been satisfied and to determine the individual responsibilities of each defendant involved in this litigation.

It appears to me that the trial court and the majority opinion conflate the concept of full faith and credit with the concept of satisfaction of judgment. In the present case, I concur with the majority opinion that a foreign judgment is entitled to full faith and credit. However, based upon this lower court record, I am unable to determine if this judgment has been satisfied.¹

It is simply common sense to conclude that you cannot enforce a judgment that has been satisfied. In the present case, the trial court refused to conduct an evidentiary hearing to determine if the foreign judgment had been satisfied, and the majority opinion seems willing to allow plaintiff to collect on a judgment whether or not it has already been satisfied.

Defendant Clapper is not attempting to raise any defenses regarding the validity of the foreign judgment; in fact, he admits that it is a valid judgment. His position is that the judgment has been paid.²

¹ The majority and the trial court also conflate the issues of whether enforcement proceedings are available and whether the judgment has been satisfied. I concur with the majority that we apply Michigan law to enforcement proceedings. However, I note there is no enforcement proceeding if the judgment has been satisfied.

² Defendant Clapper raises a significant issue that should be examined on remand. Clapper contends that plaintiff TacCo Falcon Point, Inc., (TacCo) and the balance of the parties to this litigation are perpetrating a shell game. The end result of the shell game is that Clapper is responsible to pay \$2.5 million for investment property, but TacCo and the other parties to this litigation end up with fee simple title to the investment property that secured the original
(continued...)

I would vacate the lower court judgment and remand to the trial court to conduct an evidentiary hearing to determine if this judgment has been paid and, if paid, the individual defendants' relative responsibilities for indemnification and contribution. Because of the multifaceted issues in this case, I would direct the trial court to issue a comprehensive written opinion that addresses all of the issues that are presented at the evidentiary hearing. I would also direct the trial court to allow testimony on the relationships of all of the parties (i.e., whether they are alter egos of the original corporation, whether the stockholders are related, etc., and the various corporations). Finally, the trial court should make specific findings on why it was necessary to use numerous corporations and both the federal and state courts to perform the relatively simple task of executing a judgment.

/s/ Peter D. O'Connell

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mortgage. Based upon this lower court record, I am unable to determine if this is the result of legitimate corporate activity, or if plaintiff is using the judicial systems in Michigan, Indiana, and Texas to divert the Court's attention from the fact that the consent judgment has already been paid by the liable parties.

Defendant Clapper alleges that American Reality Trust, Inc. (ART) and he were responsible to Island Mortgage Company (Island) for a mortgage in excess of \$3 million and that they defaulted and later entered into a consent judgment with Island. The shell game begins when ART's alleged alter ego TacCo purchases both the consent judgment and the property and makes a partial payment on the consent judgment and mortgage. The shell game continues with court proceedings in Texas, Indiana, and Michigan, concluding with collection proceedings in Michigan against defendant Clapper. Amazingly, Clapper ends up paying full price for the property but TacCo ends up with fee simple title to the investment property. ART, of course, being the alleged alter ego of TacCo, essentially pays nothing for the property but ends up with the benefit of the original transaction (original price - Clapper payment = 0). From this record I am unable to determine how such an event occurred or even if it occurred. However, on remand and after an evidentiary hearing, the trial court could determine whether the Michigan court system is being used to further the ends of a shell game and should deal with this case accordingly.